

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

JOANN WRIGHT HAYSBERT,

Plaintiff,

v.

Civil Action No. 4:20-cv-121

BLOOMIN' BRANDS, INC., *et al.*,

Defendant.

ORDER

This matter is before the Court on Plaintiff's Motion for Voluntary Dismissal. ECF No. 349. On January 8, 2024, the Court held a hearing on the Motion, at which the *pro se* Plaintiff and counsel for Defendants were present. ECF No. 356. For the reasons stated on the record, the Plaintiff's Motion is GRANTED IN PART, and the Court will allow a dismissal without prejudice subject to the conditions stated below. *Id.* At the hearing, the Court provided Plaintiff the opportunity to accept the conditions for voluntary dismissal without prejudice or proceed to trial. *Id.* The Plaintiff accepted the conditions, and therefore this case is DISMISSED WITHOUT PREJUDICE subject to the below conditions. *Id.* Plaintiff is CAUTIONED that the statute of limitations continues to run.

Pursuant to Rule 41(a)(2), "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). "In considering a motion for voluntary dismissal, the district court must focus primarily on protecting the interests of the defendant." *Davis v. USX Corp.*, 819 F.2d 1270, 1273 (4th Cir. 1987). The Court may "impose conditions on voluntary dismissal to obviate any prejudice to the defendants which may otherwise result from dismissal without prejudice." *Id.* The Court determined that voluntary

dismissal without prejudice is appropriate only subject to conditions to protect Defendants against prejudice due to the significant advancement of this case.

Accordingly, the case is hereby DISMISSED WITHOUT PREJUDICE subject to the following conditions:

1. If Plaintiff chooses to refile this case, she must refile it in the Eastern District of Virginia.
2. If Plaintiff chooses to refile this case, the parties may not engage in additional discovery, and any discovery taken in the instant case may be used in the refiled case. The parties are therefore limited, for example, to the expert designations, reports, and opinions; witnesses; and exhibits disclosed in the instant case.
3. If the case is refiled, all existing pretrial determinations will be maintained. In other words, if the case is refiled, it will be procedurally in the same position as the instant case.
4. Plaintiff may not file previously withdrawn claims for past or future medical specials, a life care plan, or claims for lost earning capacity or future lost wages.
5. To the extent that any designated expert witnesses were previously withdrawn, those expert witnesses will remain withdrawn.


Plaintiff may appeal from this Dismissal Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. This written notice must be received by the Clerk within thirty days of the entry date of this Dismissal Order. If Plaintiff wishes to proceed *in forma pauperis* on appeal, the application to proceed *in forma pauperis* must be submitted to the Clerk of the United States Court of Appeals for the Fourth Circuit, 1100 East Main Street, Richmond, Virginia 23219.

Nothing in this Order shall be read to affect the outstanding Motion for Sanctions, ECF No. 326, which remains pending in this matter.

The Clerk is directed to send a copy of this Order to all counsel of record and mail a copy of this Order to *pro se* Plaintiff Dr. Haysbert at her address of record.

It is SO ORDERED.

Date: January 11, 2024
Newport News, Virginia



/s/ Elizabeth W. Hanes
United States District Judge